

**Introduced by Senator Corbett**

January 14, 2010

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An act to amend Sections 22950.5, 22955, 22962, and 22971 of the Business and Professions Code, and to add Section 111247 to the Health and Safety Code, relating to tobacco, and declaring the urgency thereof, to take effect immediately.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 882, as introduced, Corbett. Tobacco: nicotine delivery devices.

Existing law, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act), establishes various requirements for retailers relating to tobacco sales to minors. A violation of this act is a crime.

This bill would authorize action to halt the sale, distribution, or offering for sale of electronic cigarettes that have not been approved or cleared by the federal Food and Drug Administration. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

The Sherman Food, Drug, and Cosmetic Law requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. A violation of these provisions is a crime.

This bill would deem any article that can provide inhaled doses of nicotine by delivering a vaporized solution a drug under these provisions. By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 22950.5 of the Business and Professions  
2 Code is amended to read:

3 22950.5. For purposes of this division, the following terms  
4 have the following meanings:

5 (a) "Department" means the State Department of Public Health.

6 (b) "Enforcing agency" means the State Department of Public  
7 Health, another state agency, including, but not limited to, the  
8 office of the Attorney General, or a local law enforcement agency,  
9 including, but not limited to, a city attorney, district attorney, or  
10 county counsel.

11 (c) "Tobacco product" means a product containing tobacco  
12 leaf, including, but not limited to, cigarettes, cigars, pipe tobacco,  
13 snuff, chewing tobacco, dipping tobacco, bidis, or other  
14 preparation of tobacco, or a tobacco substitute.

15 (d) "Tobacco substitute" means an article that can provide  
16 inhaled doses of nicotine by delivering a vaporized solution,  
17 including, but not limited to, an electronic cigarette.

18 SEC. 2. Section 22955 of the Business and Professions Code  
19 is amended to read:

20 22955. Agents of the state department, while conducting  
21 enforcement activities pursuant to this division, are peace officers  
22 and are subject to all of the powers and immunities granted to Food  
23 and Drug Section inspectors pursuant to Section 106500 of the  
24 Health and Safety Code in the same manner as are any Food and  
25 Drug Section inspectors of the state department. *These agents may*  
26 *take enforcement action to halt the sale, distribution, or offering*  
27 *for sale to minors of tobacco substitutes that have not been*  
28 *approved or cleared by the federal Food and Drug Administration.*

29 SEC. 3. Section 22962 of the Business and Professions Code  
30 is amended to read:

22962. (a) For purposes of this section, the following terms have the following meanings:

(1) “Self-service display” means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

(2) “Tobacco paraphernalia” means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

~~(3) “Tobacco product” means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.~~

~~(4)~~

(3) “Tobacco store” means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products.

(B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

(C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person’s parent or legal guardian, as defined in Section 6903 of the Family Code.

(D) Does not sell alcoholic beverages or food for consumption on the premises.

(b) (1) (A) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display. ~~A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.~~

(B) A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(2) It is unlawful for a person engaged in the retail sale of blunt wraps to place or maintain, or to cause to be placed or maintained, any blunt wraps advertising display within two feet of candy,

1 snack, or nonalcoholic beverage displayed inside any store or  
2 business.

3 (3) It is unlawful for any person or business to place or maintain,  
4 or cause to be placed or maintained, any blunt wrap advertising  
5 display that is less than four feet above the floor.

6 (c) Subdivision (b) shall not apply to the display in a tobacco  
7 store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping  
8 tobacco, provided that in the case of cigars they are generally not  
9 sold or offered for sale in a sealed package of the manufacturer or  
10 importer containing less than six cigars. In any enforcement action  
11 brought pursuant to this division, the retail business that displays  
12 any of the items described in this subdivision in a self-service  
13 display shall have the burden of proving that it qualifies for the  
14 exemption established in this subdivision.

15 (d) The Attorney General, a city attorney, a county counsel, or  
16 a district attorney may bring a civil action to enforce this section.

17 (e) This section ~~does~~ *shall* not preempt or otherwise prohibit  
18 the adoption of a local standard that imposes greater restrictions  
19 on the access to tobacco products than the restrictions imposed by  
20 this section. To the extent that there is an inconsistency between  
21 this section and a local standard that imposes greater restrictions  
22 on the access to tobacco products, the greater restriction on the  
23 access to tobacco products in the local standard shall prevail.

24 SEC. 4. Section 22971 of the Business and Professions Code  
25 is amended to read:

26 22971. For purposes of this division, the following terms shall  
27 have the following meanings:

28 (a) “Board” means the State Board of Equalization.

29 (b) “Importer” means an importer as defined in Section 30019  
30 of the Revenue and Taxation Code.

31 (c) “Distributor” means a distributor as defined in Section 30011  
32 of the Revenue and Taxation Code.

33 (d) “Manufacturer” means a manufacturer of cigarettes or  
34 tobacco products sold in this state.

35 (e) “Retailer” means a person who engages in this state in the  
36 sale of cigarettes or tobacco products directly to the public from  
37 a retail location. Retailer includes a person who operates vending  
38 machines from which cigarettes or tobacco products are sold in  
39 this state.

40 (f) “Retail location” means both of the following:

1 (1) Any building from which cigarettes or tobacco products are  
2 sold at retail.

3 (2) A vending machine.

4 (g) “Wholesaler” means a wholesaler as defined in Section  
5 30016 of the Revenue and Taxation Code.

6 (h) “Cigarette” means a cigarette as defined in Section 30003  
7 of the Revenue and Taxation Code.

8 (i) “License” means a license issued by the board pursuant to  
9 this division.

10 (j) “Licensee” means any person holding a license issued by  
11 the board pursuant to this division.

12 (k) “Sale” or “sold” means a sale as defined in Section 30006  
13 of the Revenue and Taxation Code.

14 (l) “Tobacco products” means tobacco products as defined in  
15 subdivision (b) of Section 30121 and subdivision (b) of Section  
16 30131.1 of the Revenue and Taxation Code.

17 (m) *“Tobacco substitute” means an article that can provide*  
18 *inhaled doses of nicotine by delivering a vaporized solution,*  
19 *including, but not limited to, an electronic cigarette.*

20 ~~(m)~~

21 (n) “Unstamped package of cigarettes” means a package of  
22 cigarettes that does not bear a tax stamp as required under Part 13  
23 (commencing with Section 30001) of Division 2 of the Revenue  
24 and Taxation Code, including a package of cigarettes that bears a  
25 tax stamp of another state or taxing jurisdiction, a package of  
26 cigarettes that bears a counterfeit tax stamp, or a stamped or  
27 unstamped package of cigarettes that is marked “Not for sale in  
28 the United States.”

29 ~~(n)~~

30 (o) “Person” means a person as defined in Section 30010 of the  
31 Revenue and Taxation Code.

32 ~~(o)~~

33 (p) “Package of cigarettes” means a package as defined in  
34 Section 30015 of the Revenue and Taxation Code.

35 ~~(p)~~

36 (q) (1) “Control” or “controlling” means possession, direct or  
37 indirect, of the power:

38 (A) To vote 25 percent or more of any class of the voting  
39 securities issued by a person.

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

(2) For purposes of subparagraph (B) of ~~this subdivision~~ *paragraph (1)*, a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control ~~such~~ *that* other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

~~(q)~~

(r) “Law enforcement agency” means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

~~(r)~~

(s) “Brand family” has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

~~(s)~~

(t) The amendments made to this section by the act adding this subdivision shall become operative May 1, 2007.

SEC. 5. Section 111247 is added to the Health and Safety Code, to read:

111247. Any article that can provide inhaled doses of nicotine by delivering a vaporized solution, including, but not limited to, an electronic cigarette, shall be deemed to be a drug as defined in Section 109925. This section shall not be construed as bearing on or being relevant to the question of whether any other product is a drug as defined in Section 109925 or a device as defined in Section 109920.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of  
2 the Government Code, or changes the definition of a crime within  
3 the meaning of Section 6 of Article XIII B of the California  
4 Constitution.

5 SEC. 7. This act is an urgency statute necessary for the  
6 immediate preservation of the public peace, health, or safety within  
7 the meaning of Article IV of the Constitution and shall go into  
8 immediate effect. The facts constituting the necessity are:

9 In order to protect the health of minors from a product with  
10 contents that have not been comprehensively studied and are  
11 unregulated on the market, it is necessary for this bill to go into  
12 immediate effect.